

REMARKS

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner.

Upon entry of this response, Claims 1-4, 6-10, 12-17, 19-22, 24-25, 37-38, and 40-41 will be all the claims pending in the instant application. Instantly, Claim 1 is amended while Claims 5 and 11 are cancelled.

Applicants respectfully submit no new matter has been added by the present amendment. Support for the amendment can be found generally throughout the text. It should be noted this amendment is not in acquiescence of the Office's position on the allowability of the claims, but merely to expedite prosecution.

The Office is respectfully requested to reconsider the rejections and objections presented in the outstanding Office Action in light of the following remarks.

I. Rejections

As indicated above, the claims are now amended to include the subject matter of cancelled Claims 5 and 11. As such, the claims now include, *inter alia*, the limitations: "wherein a variation in the diameters of the primary particles is less than 250%, as determined by the formula (I) $[(d1 - d2) / d2] \times 100 \%$ (I), where d1 and d2 are any two diameters of a single primary particle and where d1 is greater than d2," and a microgel having "a breadth of a glass transition temperature range of greater than about 5°C."

As explained further below, none of the cited references teaches or suggests the presently claimed invention and, therefore, the rejections should now be withdrawn.

A. 35 USC 102

Claims 1-10, 12-17, 19-22, 24 and 38 stand rejected under 35 USC 102(b) as anticipated by Obrecht, US Pat. Pub. No. 2001/0006995 (hereafter "Obrecht").

Claims 1-2, 13-14, 16-17, 22, 25-25, 37-38 and 40 are rejected under 35 USC 102(b) as anticipated by Downey et al., USPN 4,533,598 (hereinafter "Downey").

As correctly determined by the Office, neither Obrecht nor Downey teach the subject matter of former Claim 11, namely, "a breadth of a glass transition temperature range of greater than about 5°C." As such the applied art does not anticipate the present invention because, at the very least, "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under construction." *W.L. Gore & Associates, Inc. v. Garlock*, 721 F.2d 1540, 1554 (Fed. Cir. 1983).

The rejections should now be withdrawn for this reason alone.

In addition to the above, regarding the rejection of now cancelled Claim 5 as being anticipated by Obrecht, Applicants also disagree and comment as follows. As provided above, Claim 1 now includes the subject matter of cancelled Claim 5, namely, a specific variation in the diameters of the microgel primary particles of less than 250%, as determined by the formula (I) $[(d1 - d2) / d2] \times 100 \%$ (I), where d1 and d2 are any two diameters of a single primary particle and where d1 is greater than d2.

The Office opines that by inserting the particle sizes of 37 nm and 53 nm, as disclosed by Obrecht, into the variation in diameters formula (I) of Applicants, the present limitation will be met. However, the diameters d1 and d2 each measure a diameter of the same primary particle (i.e., d1 and d2 are not two separate primary particle diameters). Therefore, Obrecht's teaching of two diameters of two separate particles fails to teach or suggest the presently claimed variation in diameter calculated via Applicants' formula I.

In light of the above, the rejections should be withdrawn at this juncture.

B. 35 USC 103

a) Claim 11 stands rejected under 35 USC 103(a) as obvious over Obrecht in view of Cheung et al., USPN 6,136,923 (hereinafter "Cheung").

Again as provided above, the subject matter of cancelled Claim 11 is now included in amended Claim 1. Therefore, Applicants traverse the instant rejection as follows.

As rightly noted by the Office, Obrecht fails to teach or suggest a microgel having a breadth of a glass transition temperature range of greater than about 5°C. The Examiner looks to Cheung as disclosing examples of compositions having a breadth of T_g greater than 5°C. The Office indicates that "it would have been obvious ... to optimize the breadth of T_g for the microgel of Obrecht, as taught by Cheung, with the motivation of impairing vibration dampening properties." (Office Action, Page 8).

Applicants respectfully submit, Cheung fails to teach or suggest a breadth of T_g .

As explained in Applicants' disclosure:

T_g and ΔT_g are determined graphically on the DSC curve of the second heating operation. To that end, three straight lines are plotted on the DSC curve. The first straight line is plotted on the part of the DSC curve below T_g , the second straight line is plotted on the branch of the curve passing through T_g with the point of inflection, and the third straight line is plotted on the branch of the DSC curve above T_g . Three straight lines with two points of intersection are thus obtained. The two points of intersection are each characterised by a characteristic temperature. The glass transition temperature T_g is obtained as the mean of these two temperatures, and the breadth of the glass transition ΔT_g is obtained from the difference between the two temperatures.

(Page 9, Line 29 – Page 10, Line 7).

As best understood, Cheung provides, as illustrated in examples, a blend of flexible PVC and ethylene/styrene interpolymers, which may have dual T_g s. However, there is no teaching or suggestion in Cheung that such dual T_g s would result in a ΔT_g as calculated in Applicants' invention.

It is well-settled that to establish a *prima facie* case of obviousness, the USPTO must show, at minimum, the prior art combination of references teaches or suggests all of the limitations of the claims. *In re Wilson*, 165 USPQ 494, 496, (CCPA 1970). Cheung fails to overcome the deficiencies regarding Obrecht as provided above and also fails to teach or suggest the instantly claimed breadth of T_g . Therefore, withdrawal of the rejections is requested.

b) Claims 25, 37, and 40-41 are rejected under 35 USC 103(a) as obvious over Obrecht.

It is submitted that the present claims are not obvious in view of Obrecht for, at least, those reasons articulated above; therefore, the rejections should also now be withdrawn.

II. Conclusion

In summary, it is respectfully submitted that the instant application, including Claims 1-4, 6-10, 12-17, 19-22, 24-25, 37-38, and 40-41, is presently in condition for allowance. Notice to the effect is earnestly solicited. If there are any further issues in this application, the Examiner is invited to contact the undersigned at the telephone number listed below.

The USPTO is hereby authorized to charge any fees which may be required by this paper and/or to credit any overpayments to Deposit Account No. 50-2527.

Respectfully submitted,

By



Nicanor A. Kohncke
Attorney for Applicants
Reg. No. 57,348

LANXESS Corporation
Law & Intellectual Property Department
111 RIDC Park West Drive
Pittsburgh, Pennsylvania 15275-1112
(412) 809-2234
FACSIMILE PHONE NUMBER:
(412) 809-1054

s:\law shared\shared\patents\8000-8999\8231-1\8231-1 reposne and amendment november 2010.doc